

Coös, }
May 7, 1912. }

WHITE v. FERNALD-WOODWARD Co. & Trs.

GERRISH, *Adm'r*, v. WOODWARD & Tr.

Individual funds attached for a partnership debt and duly adjudged payable to the plaintiff in the action are not subject to subsequent attachment by the defendant's individual creditors.

FOREIGN ATTACHMENT. White brought suit against the Fernald-Woodward Company, a partnership of which one Woodward was a member, and summoned the Burbank Company and the Orient Insurance Company as trustees. The Burbank Company disclosed that they were indebted to Woodward upon a promissory note for \$6,000, but had given him an order on the Insurance Company for \$3,060.84, which was to be applied in payment of the note. The Insurance Company disclosed that they had accepted the Burbank Company's order and owed Woodward \$3,060.84. Decker appeared as claimant of the money and agreed with White that the court should appoint a receiver to collect it and hold it until the question as to whom it should be paid was determined. The court held that the funds belonged to White. *White v. Company*, ante, 83. After the opinion was filed, Decker brought suit against Woodward and summoned the receiver as trustee; and when White moved for judgment in his suit against the Fernald-Woodward Company, in accordance with the decision of the court, Decker again appeared as claimant of the funds. Decker is dead, and his suit against Woodward is prosecuted by his administrator. The question whether White's motion for judgment should be granted was transferred without a ruling from the December term, 1911, of the superior court by *Pike, J.*

Libby & Coulombe (*Mr. Coulombe* orally), for White.

Drew, Shurtleff & Morris and *Matthew J. Ryan* (*Mr. Morris* orally), for Decker.

YOUNG, J. The rule which prefers an attachment of a person's property by his individual creditors over one made by his partnership creditors (*Jarvis v. Brooks*, 23 N. H. 136, 141) is subject to the limitation that the attachment of the individual creditors must be

made before the property is appropriated to pay the partnership debt. *Bowker v. Smith*, 48 N. H. 111. Money held on trustee process is "appropriated" within this rule at the time the trustee pays it by order of court to or for the use of the plaintiff in the action in which it is attached. The court had decided that White was entitled to judgment and ordered the trustee to pay the money to a receiver, to hold for the use of either White or Decker, as their right should appear, long before Decker attached it. The money, therefore, had been appropriated to pay White's claim when Decker attached it. Consequently he takes nothing by his attachment.

Case discharged.

All concurred.

Rockingham, }
June 4, 1912. }

EVANS v. WATKINS.

The fact that a husband is in the possession and control of a farm purchased with his funds, but to which his wife has the legal title, warrants the inference that he occupies as tenant, in the absence of evidence that he is her servant or agent. A tenant of a farm can maintain trespass *quare clausum* against one who enters and cuts grass by virtue of a purchase from the owner of the premises prior to a legal termination of the tenancy.

TRESPASS *quare clausum*. Trial by the court. Transferred from the April term, 1911, of the superior court by *Pike, J.*

The plaintiff bought the premises in question in 1907 and paid the purchase price from his own money. His wife having refused to live there unless the title was taken in her name, the deed was made to her, and they lived on the premises until 1910. Some months prior to the alleged trespass, the plaintiff's wife left him and subsequently gave the defendant a bill of sale of the standing grass, for which he paid her \$50. The trespass complained of is the entry and the cutting and removal of the grass by the defendant. At that time the plaintiff had sowed oats upon a portion of the premises and before the defendant's entry forbade him to enter or cut. If upon the foregoing facts the plaintiff can maintain this action,